IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

FAO.No. 106 of 2007()

IA NO.839/2006 IN AS.55/2004 of SUB COURT, HOSDURG
O.S.NO.388/2000 OF MUNSIFF'S COURT, HOSDURG.

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APPELLANTS/APPLICANTS/APPELLANTS/DEFENDANTS

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1. KUNJAMI, AGED 54 YEARS, W/O. PATTIATH KUNHABDULLA HAJEE, R/AT PUNCHAVI, KANHANGAD VILLAGE, KASARAGOD.

2. K.P.MUHAMMEDKUNHI HAJI, AGED 54 YEARS, S/O. DAINABI, OZHINHAVALAPPU, KANHANGAD, KASARAGOD.

3. K.P.PATHUNHI, AGED 51 YEARS, S/O. DAINABI, OZHINHAVALAPPU, KANHANGAD, KASARAGOD.

4. AYISHU, AGED 43 YEARS, D/O. DAINABI, NHANIKKADAVU, KANHANGAD, KASARAGOD.

5. SUBAIDA, AGED 39 YEARS, S/O. DAINABI, PERUMBATTA, BEEMANODY VILLAGE, KASARAGOD.

6. P.P.ABDULKHADER, AGED 30 YEARS, S/O. ABOOBACKER, R/AT PUNCHAVI, KANHANGAD VILLAGE, KASARAGOD.

7. MOILAKKIRIYATH NASHEEDA, AGED 25 YEARS, D/O. MUHAMMADKUNHI, KOYAKANDA, ITTAMMAL, BALLA VILLAGE, KASARAGOD.

8. KUNHAMED, AGED 42 YEARS, S/O. PATTILLATH KUNHABDULLA HAJI, THEKKEPPURAM, AJANUR VILLAGE, KASARAGOD.

9. MARIYAM, AGED 37 YEARS, THEKKEPPURAM, AJANUR VILLAGE, KASARAGOD.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENTS/RESPONDENTS/RESPONDENTS/PLAINTIFFS
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1. H.A.EBRAHIM, AGED 59 YEARS,
S/O. ABDUL KHADER, RESIDING NEAR HOSDURG JUMA MASJID, T.B.ROAD, HOSDURG VILLAGE, KASARAGOD.

2. KODAMBALATH AMBADY, AGED 72 YEARS,
S/O. AMBADY, PADNEKKAD, KANHANGAD VILLAGE, HOSDURG TALUK, KASARAGOD.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SMT.O.K.SANTHA

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 01/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

F.A.O.No.106 of 2007

Dated, this the 1st day of October, 2007

JUDGMENT

The appeal itself is heard and disposed of as agreed to by both sides.

2. Appellants in A.S.No.55/2004 on the file of the Subordinate Judge's Court, Hosdurg are the appellants in this appeal. A.S.No.55/2004 came up for hearing on 26.7.2006. On that day the appellants and counsel were absent. Appeal was dismissed for default. Appellants filed I.A.No.839/2006 under Order XLI Rule 19 of CPC for restoration of the appeal dismissed for default. The ground stated was that due to stomach ache first appellant was unable to contact her lawyer and to give proper instructions. Lower appellate Court found that the reasons stated are not true and dismissed the application. Challenging that order this appeal is filed.

3. Lower appellate Court had found that the first appellant failed to establish the reasons for non-appearance before the court on 26.7.2006. But the lower appellate court itself had found that being an appeal the personal presence of the parties was unnecessary and lawyer could have argued the matter. After hearing both sides I am of the view that instead of dismissing the application on a technical ground the court below ought to have disposed of the matter within a time frame. So I am of the view that this First Appeal from Order is to be allowed.

In the result, First Appeal from Order is allowed. The order passed by the court below in I.A.No.839/2006 dismissing the same is hereby set aside. I.A.No.839/2006 is allowed and A.S.No.55/2004 is restored to file. Lower appellate court is directed to take A.S.No.55/2004 back to file and dispose of the same in accordance with law.

I.A.No.3317/2007 will stand dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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